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Home (19348) Dep

Ms SERIES.

G.O. No. 3011

Dated 5-8-48

[Despatch Abstract.]

1943 - The Madras Court of Small Causes (Validation of Proceedings) Act 1943,
the Madras City Civil Court and Presidency Small Cause Courts (Amendment)
Act 1945 and the Madras Civil Courts (Amendment) Act 1945 - Permanently
re-enacted - Papers recorded.

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Sec. 11-27-100,000-21-K-21

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(19~~4~~48) Department.

Ms SERIES.

p. 12/17

G.O. No. 3011

Encl.

2-8-48

[Despatch Abstract.]

OTS - The Madras Court of Small Causes (Validation of Proceedings) Act 1943
the Madras City Civil Court and Presidency Small Cause Courts (Amendment)
Act 1943 and the Madras Civil Courts (Amendment) Act 1945 - Permanently
re-enacted - Papers recorded.

Draft Memorandum under Secretariat Instruction 32 (2).

Courts - Small Cause Court, Madras - Regularisation of orders etc. passed outside Madras. The Madras Court of Small Causes (Validation of Proceedings) Act, 1943 (Madras Act VII of 1943) - Re-enactment.

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Section 5 of the Presidency Small Cause Courts Act, 1882 (XV of 1882) provides that there shall be in each of the towns of Calcutta, Madras and Bombay, a court called the Court of Small Causes of CALCUTTA, Madras and Bombay, as the case may be. The Presidency Small Cause Court, Madras; is thus required by statute to be located in the town of Madras.

2. During the emergency in 1942, the Small Cause Court, Madras was removed to Trivellore in the Chingleput district, worked there from 14-4-42 till 14-6-42 and disposed of the following business:-

- (1) One hundred and sixty-two complaints, namely, Nos. 2444 to 2605 of 1942 and 62 execution petitions, namely Nos. 2567 to 2628 of 1942 were received by the Court;
- (2) Twenty-two suits, 12 New Trial applications, 1 Ejectment Suit and 5 Execution petitions were disposed of by judgment or orders pronounced;
- (3) Orders were passed on 4 Miscellaneous Petitions (Attachment before judgments) and 83 Interlocutory petitions.

3. With a view to regularising the activities of that court outside Madras City, His Excellency the Governor of Madras enacted the Madras Court of Small Causes (Validation of Proceedings) Act, 1943 (Madras Act VII of 1943). It is considered desirable that this Act should be allowed to retain its place on the Statute Book so that there may be no difficulty in getting at it; if it is necessary to do so and re-enacted ex abundanti cautela.

4. For orders whether legislation to re-enact the Madras Act Court of Small Causes (Validation of Proceedings) Act, 1943; (Madras Act VII of 1943) will be undertaken.

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Home Department.

Draft Memorandum under Secretariat Instruction 32 (2)

Acts - Madras City Civil Court Act, 1892 and Presidency Small Cause Courts Act, 1882 - Award of costs when plaintiff sues in the High Court in cases cognizable by the City Civil Court or the Small Cause Court - The Madras City Civil Court and the Presidency Small Cause Courts (Amendment) Act, 1945 (Madras Act I of 1945) - re-enactment.

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provision exists in section 22 of the Presidency Small Cause Courts Act, 1882 (Act XV of 1882) in regard to costs when a plaintiff sues in the High Court in cases cognizable by the Small Cause Court. By the amendments to the High Court Fees Rules, 1933, published in Part II of the Fort St. George Gazette dated 2.12.41, the taxation of costs as between attorney and client on the Original Side of the High Court has been abolished. Therefore, the words 'as between attorney and client' occurring in proviso (1) to Section 16 of the Madras City Civil Court Act and section 22 of the Presidency Small Cause Courts Act required amendment. As the intention of the legislature in framing the two sections referred to above appears to have been to penalise the party choosing a wrong forum in filing a suit, the High Court suggested that the successful defendant should be allowed the maximum fee allowable in the High Court under Order V, rule 2 (c) of the High Court Fees Rule, viz., the fees fixed for suits set down for final disposal, in suits falling under the provisions referred and that to give effect to it, for the words "as between attorney and client" occurring in the above-said provisions in the two enactments, the words "at the maximum admissible under the Madras High Court Fees Rules for suits set down for final disposal", should be substituted.

2. His Excellency the Governor of Madras accepted the recommendation of the High Court and ~~the~~ enacted the Madras City Civil Court and the Presidency Small Cause Courts (Amendment) Act, 1945 (Madras Act As this Act is consequential on charges made by the High Court in its Fees Rules it is necessary to re-enact this Act, lest it should lapse on account of the revocation of the section 93. Proclamation.

3. For orders whether legislation to re-enact the Madras City Civil Court and the Presidency Small Cause Courts (Amendment) Act, 1945 (Madras Act I of 1945) will be undertaken.

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HOME DEPARTMENT.

Draft Memorandum under Secretariat Instruction 32 (2).

Act - Madras Civil Courts Act, 1873 - Section 13 - Provision for powers to High Court to hear appeals when District Courts or subordinate courts are closed for vacation - The Madras Civil Courts (Amendment) Act, 1945 (Madras Act XXII of 1945) - Re-enactment.

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Under section 13 of the Madras Civil Courts Act, 1873 (Act III of 1873), appeals from the decrees and orders of subordinate judges and district munsifs shall, when they are allowed by law, lie to the District Court except when the amount or value of the subject matter of the suits exceeds rupees five thousand in which case, the appeal shall lie to the High Court, provided that whenever a subordinate judge's Court is established in a district at a place remote from the station of the District Court, the High Court, may, with the previous sanction of the Provincial Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of the subordinate judge be preferred in the court of the latter. This provision in effect prohibits an appeal from the decree or order of a District Munsif being filed in the High Court when the District Court or subordinate court, as the case may be,

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Acts - Madras City Civil Court Act, 1892 and Presidency Small Cause Courts Act, 1882 - Award of costs when plaintiff sues in the High Court in cases cognizable by the City Civil Court or the Small Cause Court - The Madras City Civil Court and the Presidency Small Cause Courts (Amendment) Act, 1945 (Madras Act I of 1945) - re-enactment.

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Home Department

Please see A in the Legal Department's u.o. note on page 1 ante. Action has been taken in the sectional notes below, in respect of the Acts mentioned in items 1-3 and 5, on page 2 ante. Item 4 is being ~~dealt~~ dealt with separately. After orders are passed on the sectional notes, the file may be sent to L.A., Rev. Fin. and Legal Departments for remarks.

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Local Administration Department.

Please see note of this Department at p.2 of sectional notes below.

This may be forwarded to Rev. u.o.

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/True Copy/

Revenue.

Please see notes of this Department at p.2 of sectional notes. The file may be passed on to Finance.

/True Copy/

Finance (Accounts A) Department.

Necessary remarks have been added on page 2 of sectional notes below. The other items do not call for any special remarks in Finance. The file may be passed on to the Legal Department.

/True Copy/

Legal Department.

For the remarks of this department, please see pages 2 (a), 4, 6 and 8 of the sectional notes below.

/True Copy/

p.t.o.

Home Department.

His Excellency the Governor enacted the following Acts Under the powers assumed to himself under the Section 93 Proclamation:-

1. The Madras Village Courts (Amendment) Act, 1940.
(Madras Act XVIII of 1940)
2. The Madras Court of Small Cause (Validation of Proceedings) Act, 1943 (Madras Act VII of 1943)
3. The Madras City Civil Court and the Presidency Small Cause Courts (Amendment) Act, 1945 - (Madras Act I of 1945) and
4. The Madras Civil Courts (Amendment) Act, 1945. (Madras Act XXII of 1945)

2. As the above Acts lapse after 2 years from the date on which the Section 93 Proclamation is revoked, it is proposed to re-enact them so that they may not lapse. They have been noted upon in the sectional notes below. Other departments concerned have seen.

3. In view of instruction in para (3) of the Public (General) Department u.o. note No. 3764/46-6 dated 31-7-1946 first circulation to Hon'ble Minister (Law) and His Excellency ~~as required by Secretariat~~ ~~Instruction 32 (2) may be dispensed with and the case circulated to all Hon'ble Ministers and His Excellency.~~ ✓

/True Copy/

I agree. But I think the village Act is not a desirable statute at all. It is being abused in the villages. The question of its repeal may be considered by Hon'ble Minister (Law):

/True Copy/

Recirculate to Hon'ble Minister (Law)
for perusal of minute of Hon'ble Minister (Revenue)

Hon'ble Minister (Law)
(Revenue)

I agree with Hon'ble Minister (Revenue) but the matter has to be discussed in the Cabinet and its Committee as to on what lines the Bill is to be drafted. Till ~~this~~ is done, drafting cannot be undertaken. The matter may be mentioned in the next Cabinet meeting by Hon'ble Minister (Revenue).

/True Copy/

I shall personally discuss this with Hon'ble Minister (Law) first and then we may proceed further.

Hon'ble Minister (Revenue) may fix a date and ^{how} ~~have~~ to discuss the matter.

I am of opinion that the decision of cases, whether Civil or Criminal should not be left to villagers. Lot of injustice is being done now by exploiting factions for these purposes. Small cases like these can be given over to ~~the~~ tried either by stipendiary officers or by Honorary Retired Judicial Officers who will camp in villages and decide them. Bombay has recently abolished even Honorary Magistrate and appointed one Stipendiary ment

/True Copy.

which has jurisdiction over that court is closed for the vacation, In cases of appeals of an urgent nature this causes great hardships to the ~~practise~~ parties. With a view to getting over this difficulty the High Court suggested that section 13 of the Madras Civil Courts Act, 1873 should be amended so as to give power to the High Court to receive appeals when the District Court or the Sub-ordinate Court, as the case may be, is closed for the vacation.

2. His Excellency the Governor accepted the suggestion of the High Court and enacted the Madras Civil Courts (Amendment) Act, 1945 (Madras Act XXII of 1945). As this Act is of a beneficial nature since it enables parties to file suits of an urgent nature in the High Court when the concerned District Court or the Sub-ordinate Judge's Court is closed for the vacation, it is proposed to re-enact this Act, lest it should lapse on account of the revocation of the section 93 Proclamation.

3. For orders whether legislation to re-enact the Madras Civil Courts (Amendment) Act, 1945 (Madras Act XXII of 1945) will be under taken.

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Copy of U.O. Note No. 3325-1, Legal, dated 15.5.46.

Sub: Government of India Act, 1935 - Section 93 -
Acts passed during the period of the Pro-
clamation - Further action.

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Section 93 (4) of the Government of India Act, 1935, provides that any law made by His Excellency the Governor during the period when the Proclamation under section 93 was in force shall, subject to the terms of such law, continue to have effect until two years have elapsed from the date on which the Proclamation is revoked, unless sooner repealed or re-enacted. The Acts made by the Governor during the period in question commence with Madras Act I 1940 and end with Madras Act XII of 1946. It is necessary to take further action now in respect of these Acts, having regard to the provision of the Government of India Act quoted above. Some Departments have already taken the necessary action in ~~reese~~ respect of a few of these Acts. A complete list of the Acts relating to each Department is appended hereto for the information of the Departments, to ensure that no Act is lost sight of.

To the Departments of the Secretariat . Concerned.

/True Copy/

SUPERINTENDENT,
Madras Record Office,
-6-1953.

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1. The Madras Village Courts (Amendment) Act, 1948.
(M.A. XVIII of 1940).
2. The Madras Court of Small Causes (Validation of
Proceedings) Act, 1943 (M.A.VII of 1943).
3. The Madras City Civil Court and Presidency Small
Cause Courts (Amendment) Act, 1945 (M.A.I. of 1945)
4. The Court Fees (Madras Amendment) Act, 1945 (M.A. XVII of
1945):
5. The Madras Civil Courts (Amendment) Act, 1945
(M.A. XXII of 1945).

/True Copy/

SUPERINTENDENT,
Madras Record Office,
-6-1953.

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This matter may be placed before the Cabinet meeting.

Please see the minute of H.M. (Law) above. It has been ascertained from Public (Special) that the next meeting of the Cabinet is to be held on 29-1-1947. From R. at foot of p.4 ante and the further minutes it seems that the intention is that the item relating to the re-enactment of the Madras Village Courts (Amendment) Act, 1940 (Madras Act XVIII of 1940) only need be placed before the Cabinet meeting. A draft note for the Cabinet is submitted for approval. Chief Secretary may see before circulation.

/True Copy/

The agenda for 28th January, which includes the Budget is likely to be heavy and I doubt if more subjects should be added. Also there will not be enough time for circulation of the note after orders are passed and His Excellency agrees to inclusion. I would suggest that the subject be proposed for the first Cabinet meeting in February but the matter is for orders.

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Home Department.

May be circulated to Hon'ble Minister (Law) for orders with reference to Chief Secretary's note at A above.

/True Copy/

Please see portions marked X V A and the minute of H.M. (Law) at B on p.6 ante. Necessary extracts from this file have been taken for further action on the question of the re-enactment of the Madras village Courts (Amendment) Act, 1940 (M.A. XVIII of 1940).

2. From K. on p. 4. ante, it is seen that H.Ms (H.R.E.) (P.W.) and His Excellency have not seen this case. This file may now be circulated to H.Ms. (H.R.E.) (P.W.) and His Excellency in regard to the re-enactment of the Acts mentioned in items 2,3 and 4 in para of this department's note on p.4-ante.

/True Copy/

I don't find a copy of M.A. XVIII of 1940. in the file unless it is Madras Regulation No.I of 1940, which extends certain provisions of the Madras Village Courts Act 1888, to partially excluded areas. There is no doubt that the Madras Village Courts Act is being abused. It is either not put into use in many villages or where it is put into use, the administration of justice is not satisfactory in many case, particularly in factious

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villages. But some forum of cheap justice administered at the very door of the persons concerned is desirable. ~~It is~~ is not necessary. At present the Village Munsiffs or Panchayat Courts are not responsible to the public, the former being a hereditary officer this latter being elected by a system which is the worst that can be thought of the remedy seems to be to get a properly elected body of persons in the village to look after all the affairs in the village including administration of Criminal and Civil justice up to a certain extent. The contemplated village Panchayat Bill may make proper provision for meeting the above need. For the present, there may be no need either to repeal the village Courts Act 1888 or to reenact the Governor's Act concerned. The other Acts may be reenacted.

I agree that this matter may be considered by the Cabinet.

Please see the minute of H.M. (H.R.E.) at p.6 ante, the minutes of H.M. (P.W.) and H.E. above.

A. on p. 7 ante.

The Madras Village Courts (Amendment) Act 1940, (Madras Act XVIII of 1940) was ~~see~~ removed as a separate file was started in regard to the re-enactment of this Act c.f. R. on p.7 ante-D. above.

The question of the re-enactment of the Act referred to at M above was included in the agenda for the last Cabinet meeting. It has been ascertained from the Public Department that the consideration of this question was adjourned. A copy of the note for the cabinet *sent* is put up at flag J.

2. The re-enactment of the other Acts mentioned in items 2,3 and 4 on p. 4 ante has been agreed to in full circulation - c.f. K on 4 ante and C at the foot of p. 7 ante.

3. With reference to para 2 of u.o. Note No. 3764/46-6- Pub (Genl.B) dated 31-7-1946, the file, may be sent to legal Department for further action. 1

'True Copy/

LEGAL DEPARTMENT.

The attention of the Home Department is invited to this Department u.o. Note No. 3331-1 dated 26-3-47 with which a copy of the skeleton Madras Re-enacting and Repealing Bill, 1947, was forwarded to them.

2. Entries relating to the re-enactment of Madras Acts VII of 1943 and I and XXII of 1945 have been included in the First Schedule to the Madras Re-enacting and Repealing Bill, 1947, - See page 1 of flag (F)

3. In pursuance of the u.o. note referred to in paragraph 1 above, a draft of the Statement of objects and Reasons to be included in respect of the Acts is put up at flag (F) and is for acceptance in the Home Department.

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Home Department.

This case has been sent to this Department with reference to X above. The statements of Objects and Reasons in respect of the Madras Court of Small Causes (Validation of Proceedings) Act, 1943 (Madras Act VII of 1943) at p.3 of (F), the Madras City Civil Court and Presidency Small Cause Courts (Amendment) Act, 1945 (Madras Act XXII of 1945) at p. 7 of (F) may be accepted.

2.. The file may be returned to the Legal Department u.o.

/True Copy/

LEGAL DEPARTMENT.

The extracts of the Schedule and Statement of Objects and Reasons have been removed from the file and retained in this Department for use in connexion with the draft Madras Re-enacting and Repealing Bill. After the Bill is finally ready, it will be sent to the Home Department in due course for checking the entries with which they are concerned. This file is not required in this Department at present and is therefore returned to the Home Department.

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Home Department.

This may be ^{lie} over till receipt of the Bill with reference to K above.

(G.O. No. 84, Legal, dated 28-4-48)

Please see G.O. No. 84, Legal, dated 28-4-48 directing the publication of the Madras Re-enacting and Repealing (No.I) Act, 1948 permanently reenacting the Madras Court of Small Causes (Validation of Proceedings) Act, 1943, the Madras Civil Courts (Amendment) Act 1945 among certain others. No further action is called for in this file. The papers may be recorded.

G.O. Ms. No. 301.. dated 2-2-48.

Acts - The Madras Court of Small Causes (Validation of Proceedings) Act, 1943, the Madras City Civil Court and Presidency Small Causes Courts (Amendment) Act 1945 and the Madras Civil Courts (Amendment) Act, 1945 - Permanently reenacted papers recorded.

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Home Department.

SECTIONAL NOTES.

The Madras Court of Small Causes (Validation of Proceedings) Act, 1943. (Madras Act VII of 1943)

Section 5 of the Presidency Small Cause Courts Act, 1882 (XV of 1882) provides that there shall be in each of the towns of Calcutta, Madras and Bombay, a Court called the Court of Small Causes of Calcutta, Madras and Bombay as the case may be. The Presidency Small Cause Court, Madras is thus required by statute to be located in the town of Madras.

2. During the emergency in April 42, the Small Cause Court, Madras, removed to Trivellore in the Chingleput District and worked therefrom from 14.4.42 till 14-6-42. With a view to regularise the activities of that court outside the Madras City, His Excellency the Governor of Madras enacted the Madras Court of Small Causes (Validation of Proceedings Act) Act, 1943 (Madras Act VII of 1943).

3. The Act is of an ephemeral nature validating certain proceedings of the Court of Small Causes, Madras, passed outside the Madras City, during a short period of the emergency in 1942. It does not seem necessary to reenact this Act. It may be allowed to expire two years after the revocation of the Section 93 Proclamation. under section 93 (4) of the Government of India Act 1935.

Legal may see for remarks before circulation.

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Legal Department

In connection with the re-enactment of another Validating Act, viz., the Rajapalayam Municipal Executive Authority (Functions Validation) Act, 1942 (Madras Act XI of 1942), I noted as follows:-

"This was discussed with H.M. Law today. In two other cases of a similar kind, H.M. has minutes that re-enactment may be the safer course. The principle of those minutes applies equally to the present case. This enactment also (Madras Act XI of 1942) may be re-enacted ex-audantantela. It is also desirable that the Act retains its place in the statute-book, so that there may be no difficulty in getting at it, if it is necessary to do so. It cannot be kept on the statute-book after the expiry of two years unless it is re-enacted. The act may therefore be re-enacted".

The above note was approved finally by H.Ms. Law and L.A. and it was ordered that Madras Act XI of 1942 should be re-enacted.

The decision above applies a fortiori to Madras Act VII of 1943 dealt with on the previous page. This Act also should be re-enacted.

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Home Department.

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Please see X and/p.1 ante and Y and Z in the Legal Department's note above.

2. With reference to instruction 32 (2) of the Sectional Instructions, the draft memorandum submitted is for approval.

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Home Department.

The Madras City Civil Court and the Presidency Small Cause Courts (Amendments) Act, 1945 (Madras Act I of 1945).

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Clause (I) of the proviso to section 16 of the Madras City Civil Court Act, 1892, provides that if any suit or other proceeding is instituted in the High Court which in the opinion of the judge who tries the same ought to have been instituted in the City Civil Court, no costs shall be allowed to a successful plaintiff and a successful defendant shall be allowed his costs "as between attorney and client". A somewhat similar provision occurs in section 22 of the Presidency Small Cause Courts Act, 1882. As a result of the amendments made in 1941 to the High Court Fees Rules, the system of taxation of costs as between attorney and client has been abolished. The High Court therefore recommended that proviso (I) to section 16 of the City Civil Court Act and section 22 of the Presidency Small Cause Courts Act should be amended so as to provide that in the cases referred to the successful defendant should be allowed costs at the maximum admissible under the Madras High Court Fees Rules set down for final disposal. His Excellency the Governor accepted the recommendation of the High Court and enacted the Madras City Civil Court and the Presidency Small Cause Courts (Amendment) Act, 1945. Madras Act I of 1945.

2. With reference to sub section (4) of section 93 of the Government of India Act, it is suggested that as the reasons for which the Act was passed under the section 93 situation still hold good the Madras City Civil Court and the Presidency Small Cause Courts (Amendment) Act 1945 Madras Act I of 1945 - may be re-enacted.

Legal may see for remarks before circulation.

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Legal Department.

The Act is consequential on changes made by the High Court in its fees rules, and it is clearly necessary to re-enact this Act permanently.

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Home Department.

With reference to instruction 32 (2) of the Secretariat Instructions, the draft memorandum submitted is for approval.

1. The Madras Civil Courts (Amendment) Act, 1945 Madras Act XXII of 1945.

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In the judgment in S.R. No. 13996/45 on the file of the High Court it was suggested that Section 13 of the Madras Civil Courts Act (III of 1873) should be amended giving power to the High Court to receive appeals when a District Court or a subordinate Court as the case may be, is closed for the vacation. Under Section 13 of the Madras Civil Courts Act, 1873, appeals from the decrees or orders of subordinate judges and District Munsifs, which are allowed by law, lie to the District Court, except when the amount or value of the subject matter of the suit exceeds rupees five thousand in which case the appeal has to the High Court. This section also provides that the High Court. This section also provides that the High Court may with the previous sanction of the Government direct that in certain cases, appeals from the decrees or orders of District Munsifs be preferred in the Court of a subordinate judge. But under the section, an appeal from the decree or order of a subordinate judge or District Munsif Court could not be filed in the High Court, when the District Court or subordinate Judge's Court in which such appeals had to be filed was closed during vacation. Parties who had to file appeals of an urgent nature had to wait till the reopening of those Courts and consequently, were put to great inconvenience and hardship. For the reasons stated in paras 7 and 8 of the High Courts judgment at pp. 5-6 c.f of G.O. No.4539, Home dated 21-12-1945, the High Court recommended that section 13 of the Madras Civil Courts Act, 1873 should be amended so as to empower the High Court to receive appeals when District Court or the Subordinate judge's Court as the case may be, was closed for the vacation. His Excellency the Governor accepted the recommendation of the High Court and enacted the Madras Civil Courts (Amendment) Act, 1945 - Madras Act XXII of 1945.

2. The Act is of a beneficial nature enabling parties to file A suits of an urgent nature in the High Court when the concerned District Court or the Subordinate Judge's Court is closed for the vacation. With reference to sub-section (4) of section 93 of the Government of India Act, 1935, it is suggested that, as the

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reasons for which the Act was passed under the section 93 situation still hold good, the Madras Civil Courts (Amendment) Act, 1945 - Madras Act XXII of 1945 - may be re-enacted.

Legal may see for remarks before circulation.

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Legal Department.

This Act, the effect of which is set out briefly at A above, should be re-enacted permanently.

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Home Department.

With reference to instruction 32 (2) of the Secretariat

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Instructions , the draft memoransum submitted is for approval.

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SUPERINTENDENT,
Madras Record Office,
6-1953.

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